

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW AVILA,

Plaintiff,

v.

FELDER, *et al.*,

Defendants.

No. 1:21-cv-01510 JLT BAM (PC)

ORDER ADOPTING THE FINDINGS AND
RECOMMENDATIONS AND DISMISSING
THE ACTION

(Doc. 15)

The assigned magistrate judge screened the First Amended Complaint and determined Plaintiff failed to state a cognizable claim upon which relief may be granted. (Doc. 15.) Although Plaintiff identified a serious medical need, the magistrate judge found Plaintiff failed to allege the defendant acted with deliberate indifference. (*Id.* at 3-5.) In addition, the magistrate judge observed Plaintiff was unable to invoke liability under Section 1983 for any violations of the identified prison regulations related to medical emergencies and responses thereto. (*Id.* at 5, citing, *e.g.*, *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009).) Finally, the magistrate judge found Plaintiff failed to show injunctive relief and declaratory relief were appropriate. (*Id.* at 6-7.) Thus, the magistrate judge recommended dismissal with prejudice for Plaintiff's failure to state a cognizable claim upon which relief may be granted on February 23, 2022. (*Id.* at 8.)

Plaintiff timely filed objections to the Findings and Recommendations on March 14, 2022. (Doc. 16.) Plaintiff's objections set forth the same disjointed allegations and legal conclusions as

1 the First Amended Complaint, and do not address the determination that the allegations fail to
2 show the prison's physician acted with deliberate indifference in treating Plaintiff's eye pain and
3 vision loss. Although Plaintiff contends the treatment was wrong, as the magistrate judge
4 observed, disagreement with treatment does not support a claim of deliberate indifference. *See*
5 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court conducted a *de*
7 *novo* review of this case. Having carefully reviewed the entire file—including Plaintiff's
8 objections—the Court finds the Findings and Recommendations to be supported by the record and
9 by proper analysis. Accordingly, the Court **ORDERS**:

- 10 1. The Findings and Recommendations issued on February 23, 2022 (Doc. 15), are
11 **ADOPTED** in full.
- 12 2. This action is **DISMISSED**, with prejudice, for failure to state a cognizable claim
13 upon which relief may be granted; and
- 14 3. The Clerk of the Court is directed to close this case.

15
16 IT IS SO ORDERED.

17 Dated: **March 22, 2022**


UNITED STATES DISTRICT JUDGE